

Federal Communications Commission
Washington, D.C. 20554

August 14, 2000

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1776 K Street, N.W.
Washington, D.C. 20006

Re: Applications of America Online, Inc., and Time Warner Inc. for Transfers of Control, CS Docket No. 00-30

Dear Mr. Harding and Mr. Ross:

The purpose of this letter is to inform you that Commission Staff have determined that additional information is required as part of our ongoing evaluation of the application filed by America Online, Inc. ("AOL") and Time Warner Inc. ("Time Warner") (collectively, "Applicants") for Commission approval of the proposed transfer of control of Commission licenses and authorizations from Time Warner to AOL Time Warner. Accordingly, we have attached a third set of document and information requests that are intended to assist in our consideration of the merger application. These requests generally seek to clarify information in the record. In some cases, we seek further detail on information provided in earlier responses. These requests extend to AOL, Time Warner, and each firm's respective affiliates or subsidiaries and cover all forms of documentation, including all electronic versions and any copies with notations or interlineations. Please provide your responses to the document and information requests pursuant to the instructions set forth in the letter to you from To-Quyen Troung, Associate Chief, Cable Services Bureau, dated June 9, 2000.

AOL and Time Warner should provide all requested information and documents by August 28, 2000. If you have any questions or issues regarding these requests, and in particular, if you believe certain document requests can be narrowed or that you need more time to respond, please contact me at 418-7030 or Darryl Cooper at 418-1039.

Sincerely,



Royce Dickens
Deputy Chief, Policy and Rules Division
Cable Services Bureau

Attachment

cc: Deborah Lathen
William Johnson
Jim Bird
Darryl Cooper

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Applications of America Online, Inc., and Time Warner Inc. for Transfers of Control
CS Docket No. 00-30
Document and Information Request No. 3
August 14, 2000

On or before, August 28, 2000, please respond to the following document and information requests pertaining to the proposed merger.

Interactive Television

- 3.1 Please explain fully what method is used to determine where a video programming network appears on the AOLTV Program Guide, including where a network appears within categories of the AOLTV Program Guide (e.g., "movies"). Do video-programming networks negotiate with AOLTV for placement on the AOLTV Program Guide and/or for where the network will appear on the guide?
- 3.2 In your response to question 2.1(a) of the Commission Document and Information Request No.2, you state that AOL is entering into agreements with video programming networks (your "ITV partners") for the creation of interactive content for the AOLTV service. Will a video programming network that is not an ITV "partner" be required to negotiate a contract with AOLTV in order for its interactive services to be carried on AOLTV? Will the AOLTV Program Guide provide a link to an interactive programming channel that is not an ITV partner?
- 3.3 Will the manner in which an AOLTV customer accesses the interactive content of an ITV partner differ from the manner in which the customer accesses the interactive content of a non-ITV partner? If so, how?
- 3.4 Will AOLTV permit AOLTV customers to access the ATVEF signals provided by non-ITV partners? If so, how?
- 3.5 Will AOLTV permit AOLTV customers to click ATVEF buttons provided by non-ITV partners and provide non-ITV partners with a return path to the Internet?
- 3.6 Do any of Time Warner's retransmission consent agreements permit ATVEF signals to be carried? If so, please provide copies of all such agreements.
- 3.7 Please give a detailed description of AOL's and/or Time Warner's investment in ReplayTV, Inc. and/or any other personal video recorder ("PVR") company (other than TiVo) and agreements that AOL and/or Time Warner has with ReplayTV and/or any other PVR company (other than TiVo), including:
 - a. What rights the investment grants AOL and/or Time Warner, including but not limited to appointment of directors and company officers, and discounts on purchases of equipment.
 - b. The size of the investment.

- c. The percentage voting stock.
- d. The obligations that any agreements impose on AOL and/or Time Warner, including but not limited to volume of purchases and exclusivity of equipment.
- e. What obligations any agreements impose on the PVR company, including exclusivity of selling to AOL and/or Time Warner, or certain features of equipment that can only be offered to AOL and/or Time Warner.
- f. Identify the other owners of the PVR company.
- g. Please produce all agreements between AOL and/or Time Warner and the PVR company.
- h. Please describe your plans with regard to ReplayTV before the merger was announced, after the merger was announced, and after the merger is closed.

Multiple ISP Carriage

For Time Warner

- 3.8 Please produce all documents, including, but not limited to, business plans or competitive analyses, produced by Time Warner or any third-parties at the request of Time Warner, that supported Time Warner's decision to sign an exclusive contract with Road Runner for the provision of ISP services over Time Warner's cable modem platform. Please include all documents that opposed the decision to sign an exclusive contract and supported open access, as well as any documents that contrasted the business case for an exclusive contract versus open access.
- 3.9 Please produce all documents, including, but not limited to, business plans or competitive analyses, created between the time that the exclusive contract with Road Runner was signed and the merger with AOL was announced that supported a renegotiation of the Road Runner contract in favor of open access to Time Warner's cable modem platform.
- 3.10 Please produce all documents related to the business decision, referred to by CEO Gerald Levin at the Commission's July 27, 2000 en banc hearing, to renegotiate the exclusive contract with Road Runner. This should include all documents, including, but not limited to, business plans or competitive analyses, that support the decision to pursue open access.

For AOL

- 3.11 Please produce all documents, including, but not limited to, business plans or competitive analyses, produced by AOL or any third-parties at the request of AOL, that support the stated decision to provide open access on Time Warner's cable modem platform post merger.

Instant Messaging

For Time Warner

- 3.12 In a document entitled “Industry White Paper on AOL’s Submissions to the IETF and the FCC” dated July 21, 2000 (page 3), a group of instant messaging (“IM”) providers write:

No one should doubt the emerging importance of the IM market. At the recent Morgan Stanley Dean Witter conference entitled “Digital Media Conference: The Impact of the Internet on the Media Industry” [which was held June 26, 2000 at the Hilton Hotel in New York, NY], Time Warner Chairman Gerry Levin was asked [during a “Fireside Chat” hosted by Mary Meeker] what would be the most valuable asset of a merged AOL/TW. Mr. Levin answered that the number one asset of a merged AOL/TW would be IM. He proceeded to describe IM as being in an embryonic state, with features such as status detection offering tremendous future value. Mr. Levin said that IM would go well beyond the capabilities it has today.

Please confirm whether Mr. Levin addressed the issue of IM at the above-described conference. If he did so, please recount what Mr. Levin said regarding IM at the conference. Please explain Mr. Levin’s views of IM as an asset of the merged company and why it would be the most valuable asset. Please explain Mr. Levin’s views on IM’s “status detection” features.

- 3.13 Please produce all documents concerning instant messaging, presence detection protocols and/or buddy lists that have been created since the public announcement of the proposed merger.

For AOL

- 3.14 Please produce all documents concerning instant messaging, presence detection protocols and/or buddy lists, created since the public announcement of the proposed merger, that are in the files of, were prepared by, and/or were prepared for the officers and/or directors of AOL.
- 3.15 Please state, to the best of your ability, the names, numbers of customers (however measured), and dates of commencement of operation of your competitors in Instant Messaging useable by persons in the United States. To the extent you have such knowledge, please identify how the customer numbers are measured (e.g., registered users, active users, or simultaneous users). Using all forms of measurement for which you have information, please also separately quantify the numbers of instant messaging users who use AOL, AIM and/or ICQ.

AOL Anywhere

- 3.16 Please produce a map that identifies the service areas of the DSL providers with whom you have contracts to provide ISP service via DSL.
- Please identify the DSL providers with whom AOL has contractual rights to offer DSL.
 - Identify the DSL providers with whom AOL had such contracts before the merger was announced.
 - Identify the DSL providers with whom AOL entered into such contracts after the merger was announced.
 - Have any contracts with DSL providers been terminated? If so, please explain why.
 - Please produce all contracts identified in response to this request.
- 3.17 Please identify non-DSL providers, including, but not limited to computer manufacturers, with whom AOL has contractual arrangements to promote and/or market AOL ISP service over DSL.
- Please explain the nature of these contracts.
 - Please identify whether any such contracts have been entered into after the merger was announced.
 - Have any such contracts been terminated? If so, please explain why.
- 3.18 Please identify and provide documentation of any promotional and/or advertising materials encouraging consumers to sign up for AOL ISP service via DSL that AOL has offered since the merger was announced. Please identify the manner in which these materials were disseminated.
- 3.19 Can a DSL customer obtain AOL ISP service via DSL even if AOL has no contractual arrangement with the DSL provider? Please explain your answer.
- 3.20 Please describe AOL's current efforts to seek contracts with DSL providers with whom it does not already have a contractual relationship.
- 3.21 Please explain whether the AOL Plus service is the only AOL service a consumer who wishes to use AOL as its DSL ISP can receive. If not, please identify other AOL ISP services delivered via DSL.
- 3.22 Will AOL offer AOL Plus, or any other AOL-offered ISP service delivered via DSL, to NorthPoint DSL subscribers now that Verizon has acquired NorthPoint?
- 3.23 In your July 17, 2000 response to question 2.8(d), AOL indicates that it is "actively exploring new opportunities to provide its services as broadly as possible." Please explain these "new opportunities" in greater detail.
- 3.24 What are the anticipated revenues and margins for a merged AOL and Time Warner for

the following:

- a. an AOL customer who subscribes to AOL Plus service and/or any other AOL offered ISP service over Time Warner cable,
 - b. an AOL customer who subscribes to AOL Plus service and/or any other AOL offered ISP service over DSL.
- 3.25 Are there any conditions in AOL's contracts with its AOL Plus partners, or partners in any other AOL-offered ISP service delivered via DSL, that would require AOL to offer itself over multiple platforms, or prevent it from eliminating one or more platforms?
- 3.26 Please describe the AOL Plus service. In particular, please describe the services that AOL Plus provides that AOL ISP service over narrowband does not provide. Describe new services that you expect that AOL Plus will provide by December 31, 2001 and give timetables for deployment where possible. Explain how the proposed merger will affect the development of AOL Plus services that are capable of taking advantage of broadband.

Other

- 3.27 Please list and describe each existing joint venture and/or contract between Time Warner and/or AOL and/or AT&T (please exclude contracts between AT&T and Time Warner for the sale of cable video programming). Separately list those joint ventures or contracts offering service in the United States, and those offering service outside of the United States. Please include in your description (where applicable):
- the business type (e.g., cable, wireline phone service, etc.);
 - number of subscribers;
 - terms of the agreements (e.g., how profits and costs are allocated);
 - ownership percentages;
 - ownership responsibilities (e.g., which company manages the property); and the
 - purpose of the joint venture and/or contract.
- 3.28 Please list each joint venture and/or contract considered or proposed since 1997 involving Time Warner and/or AOL and/or AT&T.
- 3.29 Please list each company in which either Time Warner and/or AOL currently hold common ownership with AT&T. Please identify respective ownership percentages, the number of each company's board seats, and each company's respective voting rights.
- 3.30 Please identify each agreement and/or proposed business plan (formal or informal) to provide carriage of AOL's ISP service on AT&T's cable systems or to offer AT&T's local telephone service on Time Warner cable systems. Please produce any such agreements or plans.
- 3.31 Please describe the status of any discussions that Time Warner and/or AOL are having with AT&T regarding the provision of local telephone service.

- 3.32 Please describe the status of any discussions that Time Warner and/or AOL are having with AT&T regarding the carriage of AOL's ISP service on AT&T's cable systems.
- 3.33 Please describe the status of any discussions that Time Warner and/or AOL and/or AT&T are having with regard to any service.